Supreme Court, U.S.
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No. 94-239

IN THE
**SUPREME COURT OF THE UNITED STATES**
October Term, 1994

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ROBERT JACK VOAKES,

Petitioner,

v.

AT&T COMMUNICATIONS, INC.
and TIM ESPINOZA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA SUPREME COURT

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# RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
WILLIAM J. DRITSAS (SBN: 097523)*
KATHRYN K. MORRISON (SBN: 122845)
101 California Street, Suite 2900
San Francisco, California 94111
Telephone (415) 397-2823
Facsimile (415) 397-8549

Attorneys for Respondents

*Attorney of Record

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## QUESTION RESTATED

1. WHETHER THE STATE COURT'S HOLDING THAT, CONTRACT CLAIMS BY AN EMPLOYEE TERMINATED FOR REFUSING TO RETURN TO WORK FROM MEDICAL DISABILITY LEAVE AFTER THE EMPLOYER'S EMPLOYEE BENEFITS COMMITTEE DOCTORS CONCLUDED HE WAS NO LONGER DISABLED 'RELATE TO' A WELFARE BENEFIT PLAN, IS CONSISTENT WITH THE HOLDINGS OF THIS COURT, THE FEDERAL COURTS OF APPEALS, AND STATE COURTS OF LAST RESORT.

## STATEMENT REQUIRED BY RULE 29.1

AT&T Corp. ("AT&T") is the parent company of AT&T Communications, Inc. AT&T Communications, Inc. has no subsidiaries. AT&T (formerly known as the American Telephone and Telegraph Company) has no parent company. AT&T Capital Corporation (and its subsidiary AT&T Credit Corporation) and NCR Corporation are subsidiaries of AT&T having outstanding debt in the hands of the public. AT&T Capital Corporation has outstanding securities in the hands of the public. AT&T has entered into an agreement of merger with McCaw Cellular Communications, Inc. After the merger, McCaw would become a subsidiary of AT&T having outstanding debt in the hands of the public.

## TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTION RESTATED . . . . . | i |
| STATEMENT REQUIRED BY RULE 29.1 . . . . | ii |
| COUNTERSTATEMENT OF JURISDICTION . . . | 2 |
| COUNTERSTATEMENT OF THE CASE . . . . . | 3 |
| ARGUMENT . . . . . | 9 |
| A. THE WRIT FOR CERTIORARI SHOULD BE DENIED BECAUSE THE STATE COURT DECISION IS FULLY CONSISTENT WITH THE DECISIONS OF THIS COURT, ALL OTHER STATE COURTS OF LAST RESORT, AND ALL FEDERAL COURTS OF APPEAL . . . . . | 9 |
| B. THE CALIFORNIA COURT OF APPEAL CORRECTLY RULED PETITIONER'S CLAIMS "RELATE TO" AN ERISA-BENEFIT PLAN . . . . . | 17 |
| CONCLUSION . . . . . | 25 |

## TABLE OF AUTHORITIES

Page

### Cases


ABC-JAC v. California Apprenticeship Counc.,
4 Cal. 4th 422,
14 Cal. Rptr. 2d 491 (1992) . . . 11

Amato v. Bernard,
618 F.2d 559 (9th Cir. 1980) . . . 24

Anderson v. Electronic Data Systems Corp.,
11 F.3d 1311 (5th Cir. 1994) . . . 17

AT&T Communications, Inc. v. Superior Court,
21 Cal. App. 4th 673,
26 Cal. Rptr. 802 (1994),
review denied,
1994 Cal. Lexis 2067
(Cal. April 21, 1994) . . . . . 3, 12

Barnick v. Longs Drug Stores, Inc.,
203 Cal. App. 3d 377,
250 Cal. Rptr. 10 (1988) . . . 18, 19

Braxton v. United States,
500 U.S. 344,
111 S.Ct. 1854 (1991) . . . . . 9

Corcoran v. United Healthcare, Inc.,
965 F.2d 1321 (5th Cir.),
cert. denied, ___ U.S. ___,
113 S.Ct. 812 (1992) . . . . . 16

District of Columbia v.
Gr. Wash. Bd. of Trade,
___ U.S. ___,
113 S.Ct. 580 (1992) . . . . . 10

Hashimoto v. Bank of Hawaii,
999 F.2d 408 (9th Cir. 1993) . . . 17

Ingersoll-Rand Co. v. McClendon,
498 U.S. 133,
111 S.Ct. 478 (1990) . . . . . 10, 17

Metropolitan Life Ins. Co. v. Taylor,
481 U.S. 58,
107 S.Ct. 1542 (1987) . . . 10, 13-15

Schlenz v. United Airlines, Inc.,
678 F. Supp. 230
(N.D. Cal. 1988) . . . . . 18

Serrato v. John Hancock
Life Insurance Co.,
94 C.D.O.S. 5945,
1994 U.S. App. Lexis 19735
(9th Cir. Aug. 2, 1994) . . . . . 11

Sorosky v. Burroughs Corp.,
826 F.2d 794 (9th Cir. 1987) . 18, 19

Spain v. Aetna Life Ins. Co.,
11 F.3d 129 (9th Cir. 1993) . 11, 15

Van Camp v. AT&T Information Systems,
963 F.2d 119 (6th Cir.),
cert. denied, ___ U.S. ___,
113 S.Ct. 365 (1992) . . . . . 11, 16

## Statutes

28 U.S.C. Section 1254 . . . . . 2

28 U.S.C. section 1254(1) . . . . . 2

28 U.S.C. section 1257(a) . . . . . 3

Employee Retirement Income Security Act of 1974 ("ERISA") 29 U.S.C. §§ 1001-1381 . . . . passim

Rule 10 of the Supreme Court Rules . . . . . 9, 10, 26

Rule 10.1 . . . . . 9

Rule 10.1(b) . . . . . 2

Rule 10.1(c) . . . . . 2

Rule 10.1(b) and (c) . . . . . 26

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# RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The petition is not worthy of this Court's attention and should be denied. The decision below raises no conflict with the decision of another state court of last resort or of a United States Court of

Appeals. See Sup. Ct. R. 10.1(b). Additionally, the decision by the California Court of Appeal is consistent with this Court's precedent on the only issue raised by Petitioner--whether Petitioner's state law claims "relate to" a benefit plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA") and are, thus, preempted by federal law. See Sup. Ct. R. 10.1(c). Petitioner has set forth no special and important reasons to compel this Court to grant the Petition for a Writ of Certiorari.

## COUNTERSTATEMENT OF JURISDICTION

Petitioner incorrectly relies on 28 U.S.C. section 1254(1) to establish jurisdiction by this Court. Section 1254 governs the routing of cases from the federal courts of appeals to this Court. Petitioner is seeking review of a judgment

by the California Court of Appeal, review of which was denied by the California Supreme Court on April 21, 1994. See AT&T Communications, Inc. v. Superior Court, 21 Cal. App. 4th 673, 26 Cal. Rptr. 802 (1994), review denied, 1994 Cal. Lexis 2067 (Cal. April 21, 1994). This Court may review the final judgment of the California Supreme Court pursuant to section 1257(a), which governs the routing of cases from the highest state courts to this Court.

## COUNTERSTATEMENT OF THE CASE

In a unanimous decision, the California Appellate Court held that ERISA preempts Petitioner's causes of action because "[t]he rights of the parties cannot be determined without examining plan procedures and the enforceability of AT&T's benefits decision." Appendix to Petition for Writ of Certiorari ("Pet. App.") 31. Juxtaposed to this clear legal decision,

Petitioner's Statement of the Case is a litany of irrelevant statements about Petitioner's employment tenure and commendations he allegedly received. Petition for Writ of Certiorari ("Pet.") 4. Petitioner also asserts similarly irrelevant legal conclusions that he was "assaulted" by his supervisor "who had developed hostility towards [him]." Id.

In addition to being irrelevant to the sole legal issue in this case, these claims are devoid of any evidentiary support in the record. Petitioner at no time introduced evidence to support these sweeping allegations, despite numerous opportunities to do so. Pet. App. at 14 (Petitioner "presented scant evidence to contradict AT&T's submissions."). Instead, Petitioner has tried to inject this lawsuit with irrelevant and unsupported allegations of fact at every opportunity in an effort

to convolute the simple issue before this Court--whether Petitioner's claims "relate to" a welfare benefit plan governed by ERISA. These efforts to hide the clear legal issue in this case under layers of irrelevant and unsupported allegations only demonstrate that Petitioner is, once again, unable to challenge the well-reasoned decision of the California Court of Appeal.

Additionally, Petitioner's cursory discussion of the relevant facts of his disability leave from AT&T and of the subsequent determination that he was able to return to work is inaccurate and misleading. While on disability leave, Petitioner was examined by no fewer than four doctors, including an independent psychiatric consultant, all on behalf of AT&T's Health Affairs Department. Pet. App. at 13. Based on the findings of these doctors, the Health Affairs Department,

which acted as an arm of AT&T's Benefit Committee, determined on February 1, 1988 that Petitioner had no continuing disability and was able to return to work. Id.

Petitioner later was granted a paid personal leave of absence from February 8 to February 22, 1988. Pet. App. at 13. However, Petitioner was notified that he was to report to work on February 22, 1988 or be terminated. Id. On February 22nd, Petitioner failed to return to work and was subsequently notified that his employment with AT&T was terminated. Id.

After two successful motions by Respondents challenging Petitioner's pleadings, Petitioner was left with only two causes of action against AT&T--breach of contract and breach of the implied covenant of good faith and fair dealing--

and two causes of action against his supervisor, Tim Espinoza--intentional infliction of emotional distress and assault and battery. Respondents filed a motion for summary adjudication and motion to strike on the basis that all of Petitioner's claims, except for those arising out of the alleged assault and battery, relate to a welfare benefit plan and are preempted by ERISA. Pet. App. at 12.

As noted by the California Court of Appeal, Petitioner, in opposing summary adjudication, "presented scant evidence to contradict AT&T's submissions." Pet. App. at 14. Petitioner, instead, elected merely to dispute the legal effect of the evidence. Id.

On February 26, 1993, the Alameda County Superior Court denied Respondents'

Motion for Summary Adjudication. Pet. App. at 15. On January 25, 1994, Respondents filed a Writ of Mandate/Prohibition accompanied by Request for Immediate Stay. On May 6, 1994, the California Court of Appeal issued a peremptory writ of mandate directing the Alameda County Superior Court to vacate its order denying Respondents' Motion for Summary Adjudication and to enter a new order granting the motion on the grounds that Petitioner's two causes of action against AT&T were preempted by ERISA Id. at 33.

Petitioner sought review of this decision by the California Supreme Count. On April 21, 1994, the California Supreme Count, in bank, denied Petitioner's Petition for Review. Pet. App. at 44.

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## ARGUMENT

### A. THE WRIT FOR CERTIORARI SHOULD BE DENIED BECAUSE THE STATE COURT DECISION IS FULLY CONSISTENT WITH THE DECISIONS OF THIS COURT, ALL OTHER STATE COURTS OF LAST RESORT, AND ALL FEDERAL COURTS OF APPEAL

Rule 10 of the Supreme Court Rules provides that in granting review on writ of certiorari of a state court decision, this Court may consider: 1) whether "a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals" and 2) whether a state court "has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court." Sup. Ct. R. 10.1; See also Braxton v. United States, 500 U.S. 344, 111 S.Ct.

1854, 1857 (1991)("a principal purpose for which we use our certiorari jurisdiction ... is to resolve conflicts among the Circuit Courts of Appeals and state courts concerning the meaning of provisions of federal law").

Petitioner fails to establish any conflict between the California Court of Appeal's decision and the applicable decisions of this Court, the Circuit Courts, or any other state court of last resort as required by Rule 10 of the Supreme Court Rules. To the contrary, the California Court of Appeal's decision strictly and unexceptionably adheres to long-settled principles of ERISA preemption. See e.g., District of Columbia v. Gr. Wash. Bd. of Trade, ___ U.S. ___, 113 S.Ct. 580 (1992); Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 111 S.Ct. 478 (1990); Metropolitan Life Ins. Co. v.

Taylor, 481 U.S. 58, 107 S.Ct. 1542 (1987); Serrato v. John Hancock Life Insurance Co., 94 C.D.O.S. 5945, 1994 U.S. App. Lexis 19735 (9th Cir. Aug. 2, 1994); Spain v. Aetna Life Ins. Co., 11 F.3d 129 (9th Cir. 1993); Van Camp v. AT&T Information Systems, 963 F.2d 119 (6th Cir.), cert. denied, ___ U.S. ___, 113 S.Ct. 365 (1992); ABC-JAC v. California Apprenticeship Counc., 4 Cal. 4th 422, 14 Cal. Rptr. 2d 491 (1992).

Indeed, Petitioner does not even challenge the California Court of Appeal's discussion of the foundational law regarding the expansive scope of ERISA preemption. Instead, Petitioner erroneously insists that the decision to terminate his employment does not "relate

to" an ERISA-governed plan.[1] Petitioner ignores not only the overwhelming authority supporting a finding of preemption under analogous circumstances, but also the relevant facts that came to light during discovery as well as the factual findings of the California Court of Appeal.

Petitioner's argument illustrates his fundamental misunderstanding of the pertinent issues before this Court. Recent cases hold a variety of state tort, contract, and even statutory discrimination causes of action are preempted by the broad sweep of ERISA if resolution of the state law claim implicates or requires a review of an ERISA plan or its administration.

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[1] The California Supreme Court was not persuaded by this argument and denied the Petition for Review. AT&T Communications, Inc. v. Superior Court, 1994 Cal. Lexis 2067 (Cal. April 21, 1994).

The issues resolved in this matter were precisely the same as those addressed by this Court in Metropolitan Life Insurance Co. v. Taylor, 481 U.S. 58 (1987). In Taylor, the plaintiff employee took a leave of absence due to emotional distress and received benefits under an ERISA plan that paid benefits to employees disabled by sickness or accident. The following month, Taylor was examined by a psychiatrist designated by the employer. He was determined to be fit to return to work and consequently his benefits ceased. Id. at 61. Taylor then filed a supplemental claim for benefits for a prior back injury. He was examined by an orthopedist designated by the employer who found no disability. Id. Taylor was examined by the employer's medical department and again found to be able to return to work. Id. He refused to return to work and was terminated.

In addition to seeking reimplementation of his benefits, Taylor brought suit for breach of contract, wrongful termination, and wrongful failure to promote in retaliation for filing a claim for workers' compensation benefits. 481 U.S. at 61. This Court held that Taylor's common law contract and tort claims related to an ERISA benefit plan and were preempted by ERISA. Id.

The facts of Taylor are indistinguishable from the facts of this case. As in Taylor, Petitioner Voakes was found to be able to return to work by three physicians and one psychiatrist and was terminated when he refused to do so. And, just as in Taylor, Petitioner's state common law contract termination claims relate to an ERISA benefit plan. Consequently, the California Court of Appeal's holding that Petitioner Voakes'

claims are preempted by ERISA is not only wholly in accord with, but also mandated by Taylor.

As discussed in the California Court of Appeal's decision, the Ninth Circuit Court of Appeals, in Spain v. Aetna Life Ins. Co., recently held that a plaintiff's common law wrongful death claim was preempted by ERISA. 11 F.3d at 131-132. Spain's wrongful death action was based on Aetna's denial of a medical procedure recommended by Spain's doctor. Just like Petitioner, Spain did not seek benefits under the ERISA plan. Nonetheless, the Ninth Circuit held that ERISA preempted the "wrongful death action because the state law in its application directly 'relates to' the administration and disbursement of ERISA plan benefits." Id. at 131. Similarly, Petitioner's breach of contract claim is based on his assertion that AT&T

should have complied with his doctor's opinion, rather than rely on the medical and benefit decision made by the AT&T Benefit Committee that he was not disabled. Thus, Petitioner's claim too is preempted.

The same result is supported by Van Camp v. AT&T Information Systems, in which the court held plaintiff's claims that his retirement was forced by AT&T's alleged age and sex discrimination were preempted by ERISA because they required review of an ERISA-governed retirement agreement under which plaintiff received pension benefits. 963 F.2d at 121. See also Corcoran v. United Healthcare, Inc., 965 F.2d 1321 (5th Cir.), cert. denied, ___ U.S. ___, 113 S.Ct. 812 (1992)(wrongful death action resulting from erroneous medical decision denying disability benefits made by company that provided utilization review services to an ERISA plan preempted).

Recently, in Anderson v. Electronic Data Systems Corp., 11 F.3d 1311 (5th Cir. 1994), the court concluded that a state wrongful termination cause of action based on a refusal to commit violations of ERISA and reporting such violations to management, is preempted by ERISA. The Fifth Circuit, relying on this Court's holding in Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 111 S.Ct. 478 (1990), held that Anderson's claim depended on the existence of a pension plan, and therefore, related to an ERISA plan. 11 F.3d at 1314. See also Hashimoto v. Bank of Hawaii, 999 F.2d 408 (9th Cir. 1993).

### B. THE CALIFORNIA COURT OF APPEAL CORRECTLY RULED PETITIONER'S CLAIMS "RELATE TO" AN ERISA-BENEFIT PLAN

Petitioner points to no case law evidencing that the California Court of Appeal's well reasoned opinion was

inconsistent with relevant authority. Instead, Petitioner argues that Petitioner's theory of liability is unrelated to the ERISA-governed plan. Pet. at 17. Petitioner's bald assertion cannot form the basis for a grant of certiorari.

Petitioner's reliance on Sorosky v. Burroughs Corp., 826 F.2d 794 (9th Cir. 1987), Schlenz v. United Airlines, Inc., 678 F. Supp. 230, 234 (N.D. Cal. 1988) and Barnick v. Longs Drug Stores, Inc., 203 Cal. App. 3d 377, 250 Cal. Rptr. 10 (1988) is unavailing. In addressing Sorosky, Schlenz, and Barnick, Petitioner glosses over a significant point--each of these cases hold that ERISA preempted those claims that "relate to" a benefit plan. Only where the employee was able to allege additional motives for termination that were unrelated to an ERISA plan, did such

claims fall outside the broad preemptive sweep of ERISA.

Significantly, the California Court of Appeal addressed these cases. In doing so, the court found that Petitioner, unlike the plaintiffs in Sorosky and Barnick, did not establish a basis for his contract claims independent of an ERISA-governed welfare benefit plan. Quite the contrary, the California Appellate Court specifically concluded that "the issue of whether Voakes could ignore the benefits decision of AT&T and follow the advice of his own physician ... directly relates to the benefit plan." Pet. App. at 10-11. Petitioner did not and could not sever the connection to ERISA.[2/]

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[2/] Although Petitioner asserts that "AT&T violated its Personnel Guide by not following its policies and procedures" and the decision to terminate him was based "on the conflict between petitioner and his supervisor," there is no evidence in the record to support either conclusion. Petitioner (continued...)

Petitioner tries in vain to distinguish the decision to terminate him made by AT&T management from the decision by the Benefit Committee to deny disability benefits. See Pet. at 15-17. Petitioner asserts that "[t]he decision to terminate petitioner was solely the decision of AT&T's management and was not the decision

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2/(...continued)
failed to identify any policies or procedures that AT&T violated, independent of the ERISA-governed plan, despite numerous opportunities to do so. Ironically, in Petitioner's only attempt to identify some policy or procedure AT&T violated, he could not avoid directly implicating the ERISA-governed plan. He claimed that AT&T had not followed its personnel policies relating to disability leave. This policy, however, is grounded in AT&T's ERISA-governed plan. Pet. App. at 26, 30. Petitioner's lament that the termination decision is tainted by the hostility between him and his supervisor, Tim Espinoza, also rings hollow. In fact, Petitioner presents no evidence of this alleged conflict with his supervisor. Petitioner cannot challenge his termination in the face of unrebutted evidence that Petitioner was terminated for failing to return to work after the AT&T Benefit Committee determined he was no longer disabled.

of the benefits committee or AT&T's physicians." Id. at 15. This incorrect assertion not only is contrary to the evidence and findings of the Appellate Court but also demonstrates Petitioner's misunderstanding of the decision-making process and the relationship between the AT&T doctors, the AT&T Benefit Committee, and the AT&T management team who supervised Petitioner during his brief tenure in Pleasanton, California. The uncontradicted evidence, as discussed in the petition for writ of mandate as well as Respondents' summary adjudication papers, establishes that the AT&T doctors made the determination--pursuant to the benefit plan--that Petitioner was not disabled. Pet. App. at 12-13. It is from this medical determination that the benefit and termination decisions flowed. Consequently, as the Appellate Court correctly concluded, AT&T, in terminating

Petitioner, "sought to enforce AT&T's benefits decision." Id. at 31.[3/]

Moreover, Petitioner's claim that he was medically unable to return to work directly challenges the medical decision made as part of the Plan administration. A jury cannot resolve this case and determine whether good cause existed for Petitioner's

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[3/] Petitioner disingenuously tries to distance himself from his earlier claim that he was terminated as a result of a conspiracy: "Petitioner has never alleged a conspiracy between the doctors and AT&T's management." Pet. at 15. Contrary to the representations in his Petition, Petitioner unsuccessfully tried to sever the connection with ERISA by asserting that Petitioner's supervisor "formed a group" to determine how to terminate Petitioner's employment. Pet. App. at 28-29. In desperately trying to sever the connection with ERISA, Petitioner only tightened the cord. The California Court of Appeal concluded that in making a conspiracy claim, Petitioner impliedly includes the AT&T doctors as co-conspirators, thereby challenging the integrity of the benefit plan. Id. at 29. In light of the California Appellate Court's conclusions, it is not surprising that Petitioner now wholly disavows the conspiracy argument.

termination without evaluating the testimony and conclusions of the AT&T Benefit Committee doctors, who determined that Petitioner was able to return to work. Accordingly, Petitioner cannot prevail on his claims against AT&T without the jury first making a finding concerning his alleged disability that is contrary to the decision of the Benefit Committee and the AT&T doctors implementing the Plan.

- To permit juries to review the benefit plan provided by an employer and the administration of the plan would undermine the very foundation of ERISA, which permits employers to determine what benefits will be conferred on employees and establishes the legal standard by which the denial of benefits must be judged. Employers could no longer rely on the opinions of their doctors and benefit committees in administering benefit plans for fear of

being second-guessed by juries. The end result would frustrate the stability of benefit obligations by subjecting the terms and administration of those plans to the whims of state court juries. Such action is contrary to Congress' deliberate policy choice to free employers from the specter of a state law patchwork quilt of varying regulations--which Congress wisely recognized could discourage employers from providing welfare benefits.

Stripped of its state law covering by the California Court of Appeal, Petitioner's claim involves a dispute concerning an ERISA determination that he was not medically disabled.[4/] The

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[4/] Such disputes concerning benefit plan determinations are to be resolved under the procedures established by ERISA, which include elaborate administrative appeals. See Amato v. Bernard, 618 F.2d 559 (9th Cir. 1980). As the California Appellate Court properly found, Petitioner failed to (continued...)

Appellate Court correctly held this type of state court challenge was intimately tied to an ERISA-governed plan, and thus was preempted. The fact that Petitioner is displeased with the outcome of the Court of Appeal's decision is not sufficient to grant review of this case.

## CONCLUSION

The Court of Appeal's unanimous decision is consistent with the uniform application of the law in this and every other jurisdiction that claims which "relate to" an ERISA-governed plan or the administration of that plan are preempted. Consequently, Petitioner fails to meet the grounds for granting certiorari set forth

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4/(...continued)
exhaust his administrative remedies under the Plan. Thus, the Court correctly refused to allow Petitioner to make an end run around the required administrative procedures merely by recasting his grievance under state common law.

in Rule 10.1(b) and (c) of the Supreme Court Rules and this petition for writ of certiorari should be denied.

Respectfully submitted,

AT&T COMMUNICATIONS, INC.

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
WILLIAM J. DRITSAS (SBN: 097523)*
KATHRYN K. MORRISON (SBN: 122845)
101 California Street, Suite 2900
San Francisco, California 94111
Telephone (415) 397-2823
Facsimile (415) 397-8549

Attorneys for Respondents

August 11, 1994 *Attorney of Record